



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 780

Patent Compensation Board Regulations

RIN: 1990-AA33

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is amending its Patent Compensation Board regulations to provide that the Secretary of Energy, or a person acting in that position, shall appoint, as needed, a three member panel to serve as the Patent Compensation Board to hear and decide cases falling under the subject matter jurisdiction of the Board. The Secretary of Energy shall further designate one member as the chairman. This action is made necessary by the abolishment of the Department of Energy Board of Contract Appeals, which had previously served as the Patent Compensation Board.

DATES: This final rule is effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F-067, 1000 Independence Ave., SW, Washington, DC 20585; Telephone (202) 586-2802.

SUPPLEMENTARY INFORMATION:

- I. Discussion.
- II. Final Action.
- III. Regulatory Review.

I. Discussion.

The DOE regulations at 10 CFR Part 780 establish the procedures, terms, and conditions for the DOE Patent Compensation Board. The Patent Compensation Board was established by section 157 of the Atomic Energy Act of 1954 (the “Act”) (42 U.S.C. 2187). Under section 157, the Board is given authority to determine reasonable royalty fees and to resolve issues involving the grant of awards. In addition, the Board has authority: (a) to hear and make decisions as to compensation under section 173 of the Act (42 U.S.C. 2223) and the Invention Secrecy Act (35 U.S.C. 183); (b) to hear and make decisions as to whether a specific patent is affected with the public interest pursuant to section 153a of the Act (42 U.S.C. 2183(a)); (c) to hear and make decisions as to whether a specific patent license should be granted under sections 153b(2) and 153e of the Act (42 U.S.C. 2183(b)(2), (e)); (d) to give notices, hold hearings and take such other actions as may be necessary under section 153; and (e) to exercise all powers available under the Act and necessary for the performance of these duties, including the issuance of such rules of procedure as may be necessary.

Part 780 has several outdated sections that need amending because of the abolishment of the Energy Board of Contract Appeals (EBCA). The EBCA served as the Patent Compensation Board under the current regulations. DOE is amending certain sections of 10 CFR Part 780 that related to the EBCA operating as the Patent Compensation Board. DOE is also amending the regulations to provide that the Secretary of Energy, or a person acting in that position, appoint a three member panel to serve as the Patent Compensation Board. The Secretary of Energy shall further designate one member as the chairman. None of these changes are substantive.

II. Final Action.

DOE is publishing this final rule without prior notice and opportunity for public comment, and is making the rule effective upon publication in the Federal Register, because the Administrative Procedure Act exempts rules of procedure from its notice and comment and delayed effective date requirements (5 U.S.C. 553(b)(3)(A) and (d)).

III. Regulatory Review.

A. Review Under Executive Order 12866.

This regulatory action has been determined not to be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Accordingly, this final rule was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because a general notice of proposed rulemaking is not required by any law, the analytical provisions of the Regulatory Flexibility Act do not apply, and DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the National Environmental Policy Act.

Pursuant to the Council on Environmental Quality Regulations (40 CFR §§ 1500-08), DOE has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR part 1021, DOE has determined that today's regulatory action is strictly procedural (Categorical

Exclusion A6). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

D. Review Under the Paperwork Reduction Act.

This final rule contains no new collection of information requiring OMB approval under the Paperwork Reduction Act (44 U.S.C.3501 *et seq.*)

E. Review Under Executive Order 12988.

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O.12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: 1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

F. Review Under Executive Order 13132.

Executive Order 13132, “Federalism” (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined today’s rule and has determined that it does not preempt state law and does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires a federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to state, local or tribal governments, or to the private sector. This rulemaking does not impose a federal mandate on state, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999.

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well being. This rule will have no impact on family, the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policy Assessment.

I. Review under the Treasury and General Government Appropriations Act, 2001.

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under

guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211.

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) requires federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification.

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Approval by the Office of the Secretary of Energy.

The Office of the Secretary of Energy has approved issuance of this final rule.

List of Subjects in 10 CFR part 780

Administrative practice and procedure, Inventions and patents.

Issued in Washington, DC, on **December 23, 2011.**

Daniel B. Poneman

Deputy Secretary of Energy

For the reasons set forth in the preamble, DOE amends Chapter III of Title 10 of the Code of Federal Regulation as set forth below:

PART 780—PATENT COMPENSATION BOARD REGULATIONS

1. The authority citation for part 780 continues to read as follows:

Authority: 42 U.S.C. 7151, 7254; 42 U.S.C. 5814, 5815; 42 U.S.C. 2183, 2187, 2223; 35 U.S.C. 183; North American Free Trade Agreement, Article 1709(10), as implemented by the North American Free Trade Agreement Implementation Act, Pub. L. 103-182.

2. Section 780.4 is revised to read as follows:

§ 780.4 Filing and service of documents.

(a) All communications regarding proceedings subject to this part should be addressed to: Chairman, Patent Compensation Board, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. All documents offered for filing shall be accompanied by proof of service upon all parties to the proceeding or their attorneys of record as required by law, rule, or order of the Department. Service on the Department shall be by mail or delivery to: Office of Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

(b) Filing by mail will be deemed to be complete as of the time of deposit in the United States mail.

3. Revise § 780.9 to read as follows:

§ 780.9 Make-up of the Patent Compensation Board.

The DOE Secretary of Energy, or a person acting in that position, shall appoint a three member panel to serve as the Patent Compensation Board to hear and decide cases falling under the subject matter jurisdiction set forth in § 780.3 of this part. The Secretary of Energy shall further designate one member as the chairman. The Board may be appointed to hear cases on an ad hoc basis, or on other such term of service deemed appropriate by the Secretary. All proceedings shall be conducted pursuant to rules of procedure provided by the Board.

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